

ESTTA Tracking number: **ESTTA173409**

Filing date: **11/07/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	94002189
Party	Applicant FRISCH'S RESTAURANTS, INC.
Correspondence Address	KATHRYN E. SMITH WOOD, HERRON & EVANS, L.L.P. 2700 CAREW TOWER , 441 VINE STREET CINCINNATI, OH 45202-2917 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Kathryn E. Smith
Filer's e-mail	ksmith@whepatent.com
Signature	/Kathryn E. Smith/
Date	11/07/2007
Attachments	FRSCH-22_Motion To Accept Agreement.pdf ( 54 pages )(3606365 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<u>In re Application Serial No. 76/391,539</u>	)	Concurrent Use No. 94002189
Frisch's Restaurants, Inc.	)	
	)	
v.	)	
	)	
Big Boy Restaurants International, LLC	)	
	)	
_____	)	

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MOTION TO ACCEPT CONCURRENT USE AGREEMENT**

Applicant, Frisch's Restaurant, Inc., hereby requests that the Trademark Trial and Appeal Board accept the attached fully-executed Agreement Regarding Use of Trademarks and dismiss the above-referenced Concurrent Use Proceeding. Accordingly, Frisch's, with the express agreement and acknowledgment of Big Boy Restaurants International, LLC pursuant to Paragraph 2.13 of the attached Agreement, requests that the Trademark Trial and Appeal Board favorably review the Agreement and grant Applicant's request to dismiss the instant proceeding so that Applicant's application, Serial No. 76/391,539, can be moved to registration subject to the geographic restrictions described in the Agreement.

Applicant does not believe that fees are due in connection with this filing.


However, if such fees are due, the Examiner is authorized to charge any fees to

Deposit Account No. 23-3000.

Dated: November 7, 2007

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.



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Attorney for Applicant  
Frisch's Restaurants, Inc.  
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Voice: (513) 241-2324  
Facsimile: (513) 241-6234

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Accept Concurrent Use Agreement has been served upon Jennifer Bourgoin, Esq., Attorney for Registrant, Big Boy Restaurants International, LLC, One Big Boy Drive, Warren, Michigan 48091, via e-mail and regular U.S. mail this 1<sup>st</sup> day of November, 2007.

  
\_\_\_\_\_  
Kathryn E. Smith  
Email: ksmith@whepatent.com

## **AGREEMENT REGARDING USE OF TRADEMARKS**

This Agreement is made and entered into between **FRISCH'S RESTAURANTS, INC.**, an Ohio Corporation with a business address of 2800 Gilbert Avenue, Cincinnati, Ohio 45206 (hereinafter "FRISCH'S"), and **BIG BOY RESTAURANTS INTERNATIONAL, LLC**, a Michigan Limited Liability Company, with a business address of 4199 Marcy, Warren, Michigan 48091-1799 (hereinafter "BIG BOY") (formerly known as Liggett Restaurant Enterprises LLC ("Liggett" or "LRE")).

The purpose of this Agreement is to acknowledge and confirm the scope and terms of the Intellectual Property Use and Non-Compete Agreement reached between FRISCH'S and BIG BOY on January 12, 2001 (referred to hereinafter as the "2001 Agreement"), a copy of which is attached hereto as Exhibit A and incorporated herein and made a part hereof for all purposes under this Agreement; to enable the parties to continue operating under their respective rights in and to the BIG BOY trademark within certain defined geographic territories; and to resolve the Concurrent Use Proceedings currently pending in the United States Patent and Trademark Office, before the Trademark Trial and Appeal Board.

### **BACKGROUND**

1.1 FRISCH'S and BIG BOY entered into an Intellectual Property Use and Non-Compete Agreement on January 12, 2001 concerning their respective rights to use and to federally register certain marks, including, in particular, the BIG BOY trademark (the "BIG BOY Trademark").

1.2 Liggett is the predecessor in interest of BIG BOY. Wherever Liggett appears in the 2001 Agreement, and in this Agreement, "Liggett" shall be understood to refer to BIG BOY.

1.3 Paragraph 1.(a) of Attachment 2 to the 2001 Agreement (entitled "Transfer Agreement") states:

1.(a) Frisch's Core Territory. At the Closing, as defined hereafter in Section 5, Liggett shall convey to Frisch's complete, absolute, perpetual and irrevocable ownership of the Big Boy Rights within Frisch's Core Territory. Liggett shall retain complete, absolute, perpetual and irrevocable ownership of the Big Boy Rights outside of Frisch's Core Territory. Liggett's and Frisch's respective ownership of the Big Boy Rights will be further perfected by the filing with the U.S. Trademark Office of concurrent registration documents evidencing Frisch's and Liggett's ownership of such rights within their respective territories.

Liggett will cooperate with Frisch's in the preparation and filing of all necessary documents. (...)

(Underlining added for emphasis).

1.4 Paragraph 1.(b) of the Transfer Agreement states:

(b) Concurrent Use. Concurrently with the signing of this Agreement, the parties shall sign the Limited Concurrent Use Consent Agreement attached as Exhibit D, which is expected to be used as an exhibit by Frisch's in its application(s) to be filed in the U.S. Trademark Office to register as a concurrent use registrant of all of the trademarks and service marks contained in or associated with the Big Boy Rights.

1.5 Paragraph 2 of the Transfer Agreement states:

2. Assignment of Rights. At the Closing, LRE shall assign to Frisch's, all of LRE's rights and responsibilities as franchisor of the Big Boy Rights within Frisch's Core Territory (including, but not limited to, LRE's rights as franchisor in any franchise Agreements where Frisch's is franchisee), so that Frisch's shall succeed to LRE's position as franchisor within Frisch's Core Territory. Upon the transfer of the ownership of the Big Boy Rights within Frisch's Core Territory, Frisch's shall cease to be a franchisee of LRE and Frisch's use of the Big Boy Rights within Frisch's Core Territory shall be unrestricted except to the extent otherwise provided in the "Intellectual Property Use and Non-Compete Agreement" of even date between Frisch's and LRE.

(Underlining added for emphasis).

1.6 Paragraph 4 of the 2001 Agreement states:

4. Defense of Big Boy Rights By Liggett. Liggett shall defend any challenges to the validity of the Big Boy Rights within the United States (other than infringement actions) which, if determined adversely, would have a material adverse effect upon the Big Boy Rights within the Frisch's Core Region, and the operation of Big Boy restaurants in connection therewith within Frisch's Core Region...

1.7 Neither FRISCH'S nor BIG BOY disputes the validity of the foregoing provisions of the 2001 Agreement or the Transfer Agreement. FRISCH'S and BIG BOY have continued to abide by the terms of the 2001 Agreement and the Transfer Agreement, and have upheld their respective undertakings thereunder, since January 2001 when the Agreements were executed.

1.8 Pursuant to permission granted to FRISCH'S in the 2001 Agreement and the Transfer Agreement, FRISCH'S has the right to use the BIG BOY Trademark for tartar sauce, pies, and restaurant, drive through, and carry-out services (collectively "FRISCH'S Goods and Services") in certain defined geographic territories, as described in more detail hereinbelow.

1.9 BIG BOY uses the marks set out in Exhibit B for the goods and services set out therein (collectively "BIG BOY Goods and Services").

1.10 Consistent with the allowances made for the filing of a Concurrent Use Application in Paragraph 1.(b) of the Transfer Agreement referenced hereinabove, FRISCH'S filed a Concurrent Use Trademark Application to register the BIG BOY Trademark for the FRISCH'S Goods and Services, which application has been accorded U.S. Application Serial No. 76/391,539 (the "Concurrent Use Application"), attached as Exhibit C.

1.11 The Concurrent Use Application has resulted in the filing of Concurrent Use Proceeding No. 94002189. After reviewing the facts surrounding the respective uses of the parties, the parties do not believe that there is a present likelihood of confusion caused by the current respective uses and that such uses to date have not resulted in any instances of actual confusion. The parties therefore believe that entry into the present Agreement, and consistent with their past undertakings in the 2001 Agreement and the Transfer Agreement, can minimize or eliminate the possibility of confusion arising in the future. The parties desire to settle and compromise any issues relating to their respective uses in the United States pursuant to the terms of this Agreement.

## **UNDERTAKING OF THE PARTIES**

2.1 The parties therefore agree to the following terms for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

2.2 The Concurrent Use Application contains explicit restrictions as to the geographic territories in which the parties are entitled to use the BIG BOY Trademark, and identifies a list of federal trademark properties, all incorporating the BIG BOY Trademark, subject to the parties' concurrent use rights (See Exhibit B attached hereto). Specifically, in the 2001 Agreement, FRISCH'S agreed to restrict its use of the BIG BOY Trademark for the FRISCH'S Goods and Services to the territory described as:

**Indiana**

**Kentucky**

**Ohio, except for the following counties: Cuyahoga, Lorain, Medina, Summit, Portage, Geauga and Lake**

**Tennessee, except for the following counties: Anderson, Blount, Campbell, Claiborne, Cooke, Cumberland, Fentress, Grainger, Hamblen, Hancock, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier and Union (hereinafter the "FRISCH'S Territory").**

2.3 The Concurrent Use Application specifies that FRISCH'S seeks registration of the BIG BOY Trademark for the FRISCH'S Goods and Services within the FRISCH'S Territory.

2.4 The Concurrent Use Application further specifies that the exception to FRISCH'S exclusive right to use the BIG BOY Trademark is BIG BOY's ownership rights in the BIG BOY Trademark, which arise anywhere outside of the FRISCH'S Territory (the "BIG BOY Territory").

2.5 BIG BOY, and its principal Anthony T. Michaels, CEO of Big Boy Restaurants International, LLC, expressly consented to FRISCH'S filing of the Concurrent Use Application by his signature on the Application. (See Exhibit C attached hereto).

2.6 FRISCH'S agrees that it will not use or advertise the BIG BOY Trademark in the BIG BOY Territory for BIG BOY Goods and Services.

2.7 BIG BOY agrees that it will not use or advertise the BIG BOY Trademark in the FRISCH'S Territory for FRISCH'S Goods and Services.

2.8 FRISCH'S agrees to always display the "FRISCH'S" name and mark in close proximity to each display of the BIG BOY Trademark on packaging and in marketing materials and displays, and in signage in the FRISCH'S Territory. Such use of the "FRISCH'S" mark and name goes to preventing the possibility of consumer confusion.

2.9 The parties agree to reasonably cooperate with each other to minimize the possibility of confusion in the future. In the unlikely event that an instance of confusion occurs, the parties will cooperate with each other to address any such instance.

2.10 BIG BOY agrees that neither it, nor anyone acting in concert with it, will contest the use of the BIG BOY Trademark by FRISCH'S that is consistent with the terms of this Agreement, or seek to oppose or cancel any application or registration by FRISCH'S relating to use consistent with the terms of this Agreement of a mark that is comprised of the words BIG BOY or of a mark that consists solely of the words BIG BOY with an associated design, provided that such use, application, or registration is for the FRISCH'S Goods and Services. In particular, BIG BOY will not oppose, and will work cooperatively with FRISCH'S, to enable FRISCH'S to obtain registration of the



BIG BOY Trademark for the FRISCH'S Goods and Services pending in the U.S. Patent and Trademark Office in Application Serial No. 76/391,539.

2.11 FRISCH'S agrees that neither it, nor anyone acting in concert with it, will contest the use of the BIG BOY Trademark by BIG BOY, or seek to oppose or cancel any application or registration by BIG BOY relating to the BIG BOY Trademark that is comprised of the words BIG BOY or of a mark that consists solely of the words BIG BOY with an associated design, provided that such use, application, or registration is for the BIG BOY Goods and Services and provided that the associated design is not likely to be confused with any pre-existing marks that FRISCH'S may own.

2.12 This Agreement is entered with the purpose of minimizing or precluding any likelihood of confusion in the future.

2.13 BIG BOY agrees to take all reasonable steps to dismiss FRISCH'S from Concurrent Use Proceeding No. 94002189 and to cooperate with FRISCH'S to secure such dismissal.

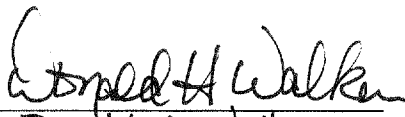
2.14 The parties agree, without further consideration, to execute, acknowledge and deliver such further documents that may be required to effectuate the intent of this Agreement and the intent of the 2001 Agreement.

2.15 The parties agree that this Agreement does not amend, alter, restrict, modify, change or supersede any provisions of the 2001 Agreements, such as but not limited to Paragraph 1 of the Transfer Agreement, and if any such conflict may arise, the 2001 Agreements shall control.


2.16 The terms of this Agreement shall be binding on and inure to the benefit of the heirs, successors, assigns, employees, officers, attorneys and subsidiaries of the parties.

2.17 This Agreement has been executed by the duly authorized officers of the parties on the dates indicated below and shall be deemed effective as of the last date of execution.

**FRISCH'S RESTAURANTS, INC.**

By:   
Name: Donald H. Walker  
Title: Vice President  
Date: November 7, 2007

**BIG BOY RESTAURANTS  
INTERNATIONAL, LLC**

By:   
Name: Anthony T. Michaels  
Title: Chief Executive Officer  
Date: October 31, 2007

**EXHIBIT A**

**Copy of Intellectual Property Use and Non-Compete Agreement  
reached between the parties on January 12, 2001**

INTELLECTUAL PROPERTY USE AND  
NON-COMPETE AGREEMENT

REDACTED

This Agreement is made and entered into on January 12, 2001 between Liggett Restaurant Enterprises LLC ("Liggett"), a Michigan limited liability company, and Frisch's Restaurants, Inc. ("Frisch's"), an Ohio corporation.

RECITALS

A. Liggett Restaurant Group, Inc. ("LRG") has entered into a certain Asset Purchase Agreement dated October 18, 2000 (the "Elias Purchase Agreement") with Elias Brothers Restaurants, Inc. ("Elias") to purchase (directly or through affiliates) certain assets of Elias (the "Elias Asset Package"), including all of Elias' right, title and interest in certain trademarks, copyrights, trade names and service marks used by Elias as franchisor and by its franchisees of Big Boy restaurants including but not limited to the trademarks listed on Schedule I attached (the "Big Boy Rights") and Elias' system of opening and operating restaurants using the Big Boy Rights (the "Big Boy System");

B. The sale of the Elias Asset Package to LRG (and its affiliates, including Liggett) was approved by the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division (the "Court"). LRG and affiliates and Elias closed the Elias Purchase Agreement on or about December 28, 2000, to be effective December 21, 2000.

C. Pursuant to that certain Restated and Amended Area Franchise Agreement between Elias, Frisch's, and other parties dated November 2, 1987, as amended ("Franchise Agreement"), Frisch's is the exclusive franchisee of the Big Boy Rights in the states of Kentucky, Indiana and in portions of Ohio and Tennessee, as more fully described on Exhibit A hereto, ("Frisch's Core Region"), and is the primary franchisee in Florida, Oklahoma, Texas and portions of Kansas, as more fully described on Exhibit B hereto (the "Expanded Territory");

D. Frisch's also has certain franchisee rights in North Carolina, South Carolina, Alabama, Arkansas, Mississippi, Louisiana and Missouri, as more fully described on Exhibit C hereto which, together with the Expanded Territory, are hereinafter referred to as the "Reconveyed Territories";

E. Frisch's, LRE and Liggett have entered into a certain agreement of even date herewith for the transfer of ownership of the Big Boy Rights in Frisch's Core Region to Frisch's and a transfer of ownership of the Big Boy Rights in the Reconveyed Territories to Liggett (the "Transfer Agreement") and a certain agreement of even date herewith for the concurrent use of the Big Boy Rights (the "Concurrent Use Consent Agreement"), to take effect if and when Liggett acquires the Big Boy Rights from Elias. This Agreement, the Transfer Agreement and the Concurrent Use Consent Agreement are sometimes hereinafter collectively referred to as the Frisch's-Liggett Agreements."

F. Frisch's and Liggett recognize that products identified with the Big Boy Rights have developed a distinctive public image over the years. Frisch's and Liggett wish to enter into this Agreement to govern the use of the Big Boy Rights by Frisch's and Liggett in their respective areas.

G. Frisch's has recently opened several "Golden Corral" restaurants. Frisch's plans to open several more Golden Corral restaurants in the future in various locations throughout parts of the United States. Although Frisch's has agreed not to open any competitive family style restaurants in the Reconveyed Territories for a period of three (3) years from the date hereof (the "Non-Compete Term"), such agreement does not restrict or otherwise affect Frisch's rights to open and operate Golden Corral restaurants. Indeed, nothing in this Agreement shall be deemed to restrict Frisch's from opening and/or operating Golden Corral restaurants at any time, anywhere.

## AGREEMENT

Therefore, in consideration of the respective promises contained herein and other good and valuable consideration, Frisch's and Liggett agree as follows:

1. Use of Big Boy Rights. Frisch's and Liggett agree that products sold under the Big Boy trade name and trade marks have a reputation for excellence and that it is of the utmost importance to both parties that this reputation be maintained. Frisch's and Liggett covenant and warrant that they will at all times: (i) use the Big Boy Rights in a manner which will not materially detract from the Big Boy reputation; and (ii) in connection with the operation of their restaurants (including those of subfranchisees): (a) use the Big Boy Rights in a manner which is substantially consistent with the past uses of the Big Boy Rights; (b) except as otherwise provided, operate all Big Boy restaurants and prepare and sell all products sold therein in a manner so as to maintain the reputation for the distinctive standards, qualities, and attributes of the Big Boy products and services currently existing; (c) maintain and operate all Big Boy restaurants in good condition and repair and in a proper and business-like manner, and use its reasonable efforts to maintain a clean, quiet, and respectable atmosphere therein; (d) prominently display the "Big Boy" mark on the signs that are located in and upon the land and buildings of each of their (or their subfranchisee's) Big Boy restaurants where reasonably possible, provided however, that they shall not be required to display the "Big Boy" mark in a more prominent manner than is consistent with their present practice; and (e) not permit gambling or other adult themes or activities or adult atmosphere (such as a "Hooters" type restaurant or staff dress) to take place at any Big Boy restaurant. Notwithstanding the foregoing, nothing herein shall be deemed to: (a) require Frisch's or Liggett to operate in a manner which is dissimilar to their current Big Boy restaurant operations, or (b) preclude or restrict Liggett in the use, promotion and application of the Big Boy Rights (to restaurant operations or otherwise) that Liggett determines in its reasonable business judgement to be in its best interest.

2. Maintenance of Big Boy Rights by Liggett. Liggett shall be responsible for maintaining United States registrations of the existing trademarks, tradenames, copyrights and service marks that are part of the Big Boy Rights. Liggett shall comply with any future laws applicable to such registrations and the maintenance thereof. Liggett and Frisch's shall cooperate with one another in connection with any filings that are required in order to maintain such registrations and shall execute any documents reasonably necessary to do so.

3. Maintenance of Big Boy Rights by Frisch's. Frisch's shall maintain Limited Concurrent Use Registrations of the existing trademarks, tradenames, copyrights and service marks that are part of the Big Boy Rights in Frisch's Core Region. If Liggett fails to take any action in a timely manner, which is necessary for the maintenance of the registrations of the existing trademarks, tradenames, copyrights, and service marks that are part of the Big Boy Rights, Frisch's shall have the right to take such action on behalf of Liggett but at Frisch's expense.

4. Defense of Big Boy Rights by Liggett. Liggett shall defend any challenges to the validity of the Big Boy Rights within the United States (other than infringement actions) which, if determined adversely, would have a material adverse effect upon the Big Boy Rights within the Frisch's Core Region and the operation of Big Boy restaurants in connection therewith within Frisch's Core Region ("Material Adverse Effect").

5. Costs of Maintaining and Defending the Big Boy Rights. Liggett shall bear 56% of the costs of maintaining and defending the Big Boy Rights as described in Sections 2 and 4 herein and Frisch's shall bear 44% of such costs. The foregoing percentages are based upon the number of Big Boy restaurants currently operated by or through (including franchisees and subfranchisees) Frisch's (126) and Liggett (159), respectively. Should the number of Big Boy restaurants operated by or through Liggett or Frisch's increase or decrease by more than five (5) restaurants, the above percentages shall be adjusted accordingly. For purposes of this section, costs shall include filing fees,

reasonable fees paid to third parties for preparation of documents for filing, and reasonable costs and legal fees to defend challenges.

6. Third-Party Infringement. Frisch's and Liggett shall promptly notify each other in writing of any infringement of the Big Boy Rights or any act of unfair competition of which they become aware. Frisch's and Liggett shall initiate legal proceedings in their respective names for infringement and/or acts that occur in their respective territories which could reasonably have a Material Adverse Effect, shall bear all of the costs of such action and shall be entitled to retain all damages and other monies recovered as a result of any such infringement or unfair competition that occurs within their respective territories, i.e., Frisch's shall bear the cost of prosecuting infringement actions and shall retain all damages and other monies recovered with respect to such actions that occur within the Frisch's Core Region; and Liggett shall bear the cost of prosecuting infringement actions and shall retain all damages and monies recovered with respect to acts that occur in all other areas. Frisch's and Liggett agree to cooperate with one another in connection with their respective actions against third-party infringers. If either party fails to comply with its obligations under this Section after 90 days notice and opportunity to commence or undertake actions required by this Section, then the aggrieved party may commence legal action against the third-party infringer in the territory of the other, at the aggrieved party's sole cost and expense. The foregoing shall be the sole remedy for a breach of the requirements set forth in the first three (3) sentences of this Section by either party.

7. Non-Compete. Frisch's hereby covenants and agrees not to open, operate or manage (directly or indirectly) any competitive family style restaurants in the Reconveyed Territories throughout the Non-Compete Term, provided however, that nothing herein shall be deemed to restrict Frisch's from opening, operating or managing Golden Corral restaurants at any time, anywhere. In consideration for this covenant, at the Closing, Liggett shall pay Frisch's, by wire transfer, the sum of

and shall deliver to Frisch's its noninterest-bearing promissory note for payable in four

equal installments on the first, second, third and fourth anniversary dates of the Closing (the "Note"). The Note shall bear a default rate of interest of twelve percent (12%) per annum and all payments shall be accelerated, at Frisch's option, in the event Liggett fails to make a payment within 15 business days of a written notice of a failure to pay. The foregoing Note may, at the election of any party, be combined with that certain promissory note of even date in the principal amount of

to be executed by LRE in favor of Frisch's pursuant to the Transfer Agreement. In addition, the combined promissory note shall contain a provision granting Frisch's an election of remedies whereby, upon default by Liggett, Frisch's shall have the option to proceed with collection of the balance due under the combined promissory note, or demand the return of certain portions of the Expanded Territories. Notwithstanding Section 10, Arbitration, Liggett shall be entitled to enforce its rights under this Section in any court of competent jurisdiction and shall be entitled to injunctive relief (and money damages) to enjoin a violation of this Section. Frisch's agrees that all payments pursuant to the Note shall be subordinate to the loan by Comerica Bank to LRG or its affiliates in accordance with the terms of the Subordination Agreement by Liggett and Frisch's in favor of Comerica Bank.

8. Notice of Breach. In the event that either party (the "Complaining Party") determines that the other party (the "Breaching Party") is in breach of the use restrictions set forth in section 1 above, then the Complaining Party shall notify the Breaching Party, in writing, of the alleged breach. Such written notice shall specify the nature of the alleged improper use and shall provide the alleged Breaching Party with thirty (30) days, or such longer time as is reasonable, if the breach cannot be reasonably cured within thirty (30) days, to cure such breach. If the alleged Breaching Party fails to cure such breach within the period for cure, then the Complaining Party shall be permitted to proceed with an arbitration of the dispute under the terms and conditions set forth in Section 8 herein.

9. Assignment of Franchise Agreement. Liggett hereby assigns and conveys to Frisch's the Franchise Agreement, as amended, provided however, such assignment



shall not diminish, modify, alter, supercede, amend or otherwise affect the respective rights and obligations of the parties under the Frisch's-Liggett Agreements or otherwise give rise to any rights in Frisch's (in connection with the Big Boy Rights, Big Boy System, or otherwise) or obligations of Liggett which are not specifically set forth in the Frisch's-Liggett Agreements. If a conflict arises between the terms of the Franchise Agreement and the terms of this Agreement and a Court of competent jurisdiction has not voided or otherwise obviated this Agreement, then the terms of this Agreement shall control.

10. Arbitration. Unless otherwise provided, all disputes arising under, or relating to the interpretation of, this Agreement, including without limitation all disputes concerning the use of the Big Boy Rights, shall be subject to final and binding arbitration in Cincinnati, Ohio, if Liggett is the Complaining Party, or in Detroit, Michigan, if Frisch's is the Complaining Party. The arbitration shall be conducted in accordance with the commercial rules of the American Arbitration Association ("AAA"). All reasonable costs incidental to the arbitration process shall be equally shared by Liggett and Frisch's; provided, however, that Liggett and Frisch's shall each bear their own attorney's fees and costs in connection with the arbitration. Moreover, the parties agree that arbitration shall not preclude a Court from granting interim equitable relief while the arbitration is pending. In no event shall the Complaining Party be entitled to relief which narrows the scope of the rights of the Breaching Party, under this Agreement, to use the Big Boy Rights.

11. Indemnification. Liggett and Frisch's each hereby agrees to indemnify, defend and hold the other (and their respective affiliates) harmless, from and against any and all loss, liability (whether known or unknown, actual or contingent, legal or equitable, mature or inchoate, howsoever arising), claim, damage and expense, including, but not limited to, reasonable attorneys' fees and amounts reasonably expended in settlement of litigation, pending or threatened, arising out of or relating to any liabilities or obligations relating to or arising from their (or their respective franchisee's or subfranchisee's) operation of Big Boy restaurants and/or their use of or operations in

connection with the Big Boy Rights, now or in the future. The foregoing indemnification shall apply solely to liabilities, expenses, damages, or losses arising from claims asserted by third-parties against either Frisch's or Liggett; it shall not provide Frisch's or Liggett with an independent claim or cause of action against each other. The parties expressly agree that no partnership or joint venture is hereby created and that they shall each operate separate businesses for which the other shall not be liable, directly, indirectly, vicariously, or otherwise. Neither Liggett nor Frisch's is required to take any action or make any claim to any third person as a precondition of seeking indemnification from the other(s) hereunder. The party seeking indemnification (the "Claimant") shall promptly give notice to the indemnifying party or parties of any matter or item which forms a basis for indemnification hereunder (a "Claim"). The Claimant shall afford the indemnifying party or parties, or their authorized representatives, the opportunity to defend, discharge or compromise such Claim and examine the books and records of the Claimant insofar as they relate to such Claim and to copy or make extracts therefrom, and will (at the expense of the indemnifying party) provide reasonable cooperation of itself and its employees and agents with respect to such Claim. At an indemnifying party's request and expense, the Claimant will assign any claims or rights which the Claimant may have against any third party in an action against the third parties, and, at the indemnifying party's expense, the Claimant will cooperate fully with the indemnifying party in pursuing any such claim or right. The indemnifying party or parties may, within ten (10) days after the Claimant has given notice of the Claim, give notice to the Claimant that the indemnifying party or parties intend to litigate or otherwise attempt to resolve the claim identified in the Claimant's notice. Upon such notice from the indemnifying party or parties to the Claimant: (i) the indemnifying party or parties, or any of them, shall have the right, at their sole cost and expense and without liability, cost or expense, to Claimant, to prosecute any such proceeding, defend any such Claim or otherwise attempt to resolve the Claim (including, but not limited to, settling such claim by paying all amounts in settlement), and (ii) Claimant shall have the right to participate at its expense in the defense of any such Claim. The indemnifying party or parties shall keep the Claimant apprised of all material developments in connection with any such Claim. Notwithstanding the foregoing, if as a result of any Claim, a judgment is entered against

Claimant in a court of competent jurisdiction, or a lien attaches to any property or asset of Claimant, or any injunction, order or decree is obtained in any court of competent jurisdiction which materially and adversely affects or threatens to materially affect the assets, property, business or operations of Claimant, Claimant may make a demand in writing to the indemnifying party to satisfy or contest in good faith at such party's cost, the judgment, lien, injunction, order or decree. If the indemnifying party fails to satisfy or contest in good faith the judgment, lien, injunction order or decree within ten (10) days after receipt of said Notice, Claimant will be entitled to discharge, compromise or settle such Claim in good faith without the consent of the indemnifying party or parties. In the event Liggett is entitled to indemnification hereunder and complies with the obligations set forth above, Liggett shall be entitled to offset against amounts owed Frisch's pursuant to the Note or the promissory note identified in the Transfer Agreement.

12. Notices. Any notice to be given hereunder shall be in writing and shall be sent by certified mail postage prepaid, or by a recognized national overnight delivery service, to the party to be notified, addressed to such party at its address appearing herein or such other address as such party, may, by written notice, have substituted therefore, and the depositing of such a notice in the mail or with the delivery service, so addressed, shall constitute the giving thereof.

If to Frisch's: Frisch's Restaurants, Inc.  
2800 Gilbert Avenue  
Cincinnati, Ohio 45206  
Attn: Craig F. Maier, President

If to Liggett: Liggett Restaurant Enterprises LLC  
4199 Marcy  
Warren, MI 48091-1799  
Attn: Robert Liggett, President

With a copy to: Henry J. Brennan, Esq.  
Timmis & Inman, LLP  
300 Talon Centre  
Detroit, Michigan 48207

13. Extension/Waiver. Either party may agree to extend the time for the performance of any of the obligations or other acts of the other party or waive compliance with any of the agreements contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the authorized representative of such party.

14. Entire Agreement. This Agreement, together with the other Frisch's-Liggett Agreements, set forth the entire integrated understanding and agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements whether written or verbal. This Agreement may not be modified, amended or terminated except in writing signed by all of the parties hereto.

15. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute the same instrument.

16. Michigan Law Governs. This Agreement is being made in and shall be governed by and construed and enforced in accordance with the laws of the State of Michigan without regard to conflict of laws principles. Notwithstanding the foregoing, the parties hereto agree that both parties have equally participated in the drafting of this Agreement and that if any term, condition or provision of this Agreement is deemed or construed to be ambiguous or vague, such ambiguity or vagueness shall not be construed in favor of or against any party to this Agreement.

17. Severability. Should any terms, provision or clause hereof or of any other agreement or document which is required by this Agreement, be held to be invalid, such invalidity shall not affect or render invalid any other provisions or clauses hereof or thereof the consideration or mutuality of which can be given effect without such invalid provision, and all of which shall remain in full force and effect. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable under applicable law.

18. Exhibits. The exhibits referenced in this Agreement and attached hereto shall be deemed to be a part of this Agreement and are incorporated herein by this reference.

19. Recitals. Each of the above-stated Recitals shall be deemed a part of this Agreement and they are incorporated herein by reference.

20. Binding Effect. This Agreement shall be binding upon the parties, their successors and assigns.

21. Assignment. Each party may assign its interests under this Agreement provided (i) that any such assignee shall also be the owner of such party's interests in the Big Boy Rights; and (ii) that the other party to this Agreement has been given written notice of such assignment.

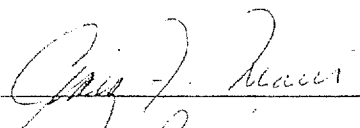
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by a duly authorized officer on the date first above written.

LIGGETT RESTAURANT ENTERPRISES LLC

By: 

Title: Chairman

FRISCH'S RESTAURANTS, INC.

By: 

Title: President

## Schedule 1

## U.S. TRADEMARKS

NAME	REG. NO.	REG. DATE	Section 8 and/or 15 filed	EXPIRATION/ RENEWAL DATE	USE CLASSIFICATION	SHORT DESCRIPTION
"Elias Brothers" (enclosed in oval)	1,102,913	9/1/97/78	\$8 - 1/28/95	Exp. 9/18/2008 Renewal - 3/18/2008	Int. Cl. 42	Misc. Services
"Fresh Magic" (stylized)	1,323,533	3/5/85	\$8 - 6/11/90	Exp. 3/4/2005 Renewal - 9/1/2004	Int. Cl. 29 Int. Cl. 30	Meats and Processed Foods Staple Foods
"Fresh Magic"	1,341,662	6/11/85	\$8 - 7/30/90	Exp. 6/10/2005 Renewal 12/10/2004	Int. Cl. 42	Misc. Services
Running "Big Boy"	910,244	3/16/71	\$8 - 3/15/77 \$15 - 2/24/84	Exp. 3/15/2001 Renewal - 9/15/2000	Int. Cl. 42	Misc. Services
Running "Big Boy"	1,806,061	11/23/93	\$8 - 12/27/99 \$15 - 12/27/99	Exp. 11/22/2003 Renewal 5/22/2003	Int. Cl. 16 Int. Cl. 42	Paper Goods and Printed Matter Misc. Services
Running "Big Boy" (Bake Shop)	1,753,878	2/23/93	None filed - not currently in use (8/26/99)	Exp. 2/22/2003 Renewal - 8/22/2002	Int. Cl. 16 Int. Cl. 42	Paper Goods and Printed Matter Misc. Services
Running "Big Boy"	1,871,436	1/3/95	\$8 - 5/19/00 \$15 - 5/19/00	Exp. 1/2/2005 Renewal - 7/22/2004	Int. Cl. 28	Toys and Sporting Goods
Running "Big Boy" (Design only)	1,818,909	2/1/94	\$8 - 4/5/00 \$15 - 4/5/00	Exp. 1/31/2004 Renewal 7/31/2003	Int. Cl. 16	Paper Goods and Printed Matter
Standing "Big Boy"	910,758	3/30/71	\$8 - 3/28/77 \$15 - 2/24/84	Exp. 6/7/2001 Renewal - 12/7/2000	Int. Cl. 29 Int. Cl. 30 Int. Cl. 32 Int. Cl. 42	Meats and Processed Foods Staple Foods Light Beverages Misc. Services
"Big Boy Express"	1,680,330	3/24/92	Due 1997 - None filed	Exp. - 3/23/2002 Renewal - 9/23/2001	Int. Cl. 42	Misc. Services
"Big Boy" (words only)	1,823,393	2/22/94	\$8 - 1/6/00 \$15 - 1/6/00	Exp. 2/21/2004 Renewal - 8/22/2003	Int. Cl. 42	Misc. Services

NAME	REG. NO.	REG. DATE	Section 8 and/or 15 filed	EXPIRATION/ RENEWAL DATE	USE CLASSIFICATION	SHORT DESCRIPTION
"Big Boy"	913,601	6/8/91	\$8 - 6/8/71	Exp. 6/7/2001 Renewal - 12/7/2000	Int. Cl. 16	Paper Goods and Printed Matter
Running "Big Boy" w/burger design	933,451	6/6/71	\$8 - 6/6/78 \$15 - 2/24/84	Exp. 6/5/2002 Renewal - 1/5/2002	Int. Cl. 29 Int. Cl. 30 Int. Cl. 35 Int. Cl. 42	Meats and Processed Foods Staple Foods Advertising and Business Misc. Services
"Big Boy"	944,155	10/3/72	\$8 - 8/1/78 \$15 - filed	Exp. 10/2/2002 Renewal - 4/2/2002	Int. Cl. 29 Int. Cl. 30 Int. Cl. 32	Meats and Processed Foods Staple Foods Light Beverages
"Big Boy Diner"	2,059,156	5/6/97	file after 5/6/2002	Exp. 5/5/2007 Renewal - 12/5/2006	Int. Cl. 42	Misc. Services
Running Big Boy with Burger	2,090,105	4/26/96	file between 4/26/01 - 4/26/02	Exp. 8/19/2007 Renewal - 8/19/2006	Int. Cl. 42	Misc. Services
Original Big Boy	2,146,671	3/24/98	file between 3/24/03 - 3/24/04	Exp. 3/23/2008 Renewal - 9/23/2007	Int. Cl. 25 Int. Cl. 28 Int. Cl. 42	Clothing Toys and Sporting Goods Misc. Services
Standing "Big Boy"	1,166,686	8/25/81	\$8 - 3/16/87 \$15 - 3/16/87	Exp. 8/24/2001 Renewal - 2/16/2001	Int. Cl. 29	Meats and Processed Foods
"Bob's"	1,230,137	3/8/83	\$8 - 7/3/89 \$15 - 4/23/90	Exp. 3/7/2003 Renewal - 9/7/2002	Int. Cl. 29 Int. Cl. 30 Int. Cl. 42	Meats and Processed Foods Staple Foods Misc. Service
"Bob's Big Boy"	1,230,170	3/8/83	\$8 - 7/3/89 \$15 - 4/23/90	Exp. 3/7/2003 Renewal - 9/7/2002	Int. Cl. 29 Int. Cl. 30 Int. Cl. 42	Meats and Processed Foods Staple Foods Misc. Services
"Bob's Big Boy Family Restaurants" (and design)	1,230,569	3/8/83	\$8 - 7/3/89 \$15 - 4/23/90	Exp. 3/7/2003 Renewal - 9/7/2002	Int. Cl. 29 Int. Cl. 30 Int. Cl. 42	Meats and Processed Foods Staple Foods Misc. Services
"Bob's Big Boy Restaurants" (and design)	1,230,570	3/8/83	\$8 - 7/3/89 \$15 - 4/23/90	Exp. 3/7/2003 Renewal - 9/7/2002	Int. Cl. 29 Int. Cl. 30 Int. Cl. 42	Meats and Processed Foods Staple Foods Misc. Services
"Bob's"	1,300,991	10/16/84	\$8 - 10/20/89 \$15 - 1/29/90	Exp. 10/15/2004 Renewal - 4/15/2004	Int. Cl. 42	Misc. Services
"Bob's Mocha Boy Coffee Truly a Cup-O-Flavor"	721,660	9/19/61		Exp. 9/18/2001 Renewal - 3/18/2001	U.S. Cl. 46	Coffee
"Health...Smart"	1,568,926	11/28/89	\$8 - 5/28/96 \$15 - 5/28/96	Exp. 11/28/09 Renewal - 5/28/09	Int. Cl. 42	Misc. Services

NAME	REG. NO.	REG. DATE	Section 8 and/or 15 filed	EXPIRATION/ RENEWAL DATE	USE CLASSIFICATION	SHORT DESCRIPTION
"Top Hat"	1.467.732	12/1/87	None filed	Exp. 11/30/2007 Renewal 5/30/2007	Int. Cl. 42	Misc. Services
"Operation Can Do!"	1.375.215	12/10/85	\$8 - 4/16/91 \$15 - 4/16/91	Exp. 12/9/2005 Renewal - 6/9/2005	Int. Cl. 42	Misc. Services
"Elbow's"	1.009.275	4/22/75	\$8 - Approx. 1983	Exp. 4/22/05 Renewal - 4/22/04	Int. Cl. 42	Restaurant Services
"FLJ Foods"	2.233.020	3/16/99	File between 3/16/04 - 3/16/05	Exp. 3/16/2009 Renewal - 3/16/2008	Int. Cl. 29 Int. Cl. 30	Meats and Processed Foods Staple Foods

Renewals: Prior to October 1, 1999 - Do not have to file §8 Affidavits with renewals  
After October 1, 1999 - File §8 Affidavits with renewals



# SCHEDULE I

## STATE TRADEMARKS

STATE	MARK/CLASS	REGISTRATION #	DATE OF LAST RENEWAL	EXPIRATION DATE
Indiana	Big Boy - Class 46	5001-256	Assignment - Mar 3, 1999	August 20, 2005
	Big Boy - Class 53	5009-2385	March 18, 2000	March 17, 2010
	Big Boy - Class 46	5009-2386	March 18, 2000	March 17, 2010
Kentucky	Big Boy - Class 42	11633	November 18, 1998	November 18, 2003
Ohio	Big Boy Hamburger - Class 29	TM3272	Assignment from Frisch's dated 12/24/98	October 10, 2008
Tennessee	Big Boy - Class 100		September 23, 1998	February 23, 2009
	Big Boy - Class 46		September 23, 1998	February 23, 2009

# EXHIBIT A

INDIANA

KENTUCKY

OHIO (except for the following counties: Cuyahoga, Lorain, Medina, Summit, Portage, Geauga and Lake)

TENNESSEE (except for the following counties: Anderson, Blount, Campbell, Claiborne, Cocke, Cumberland, Fentress, Grainger, Hamblen, Hancock, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier and Union).

## EXHIBIT B

FLORIDA (subject to certain rights granted to Marriott in a certain Agreement dated February, 1985, between Frisch's Restaurants, Inc., Kip's Big Boy, Inc. and Marriott Corporation)

TEXAS (subject to certain rights granted to Marriott in a certain Agreement dated February, 1985, between Frisch's Restaurants, Inc., Kip's Big Boy, Inc. and Marriott Corporation)

OKLAHOMA

KANSAS (Sedgwick and Sumner counties only)

## EXHIBIT C

Frisch's option for additional territory in NORTH CAROLINA, SOUTH CAROLINA, ALABAMA, ARKANSAS, MISSISSIPPI, LOUISIANA and MISSOURI as set forth in section 21 of a certain Restated and Amended Area Franchise Agreement dated November 2, 1987, by and between Elias Brothers Restaurants, Inc., Frisch's Restaurants, Inc. and Kip's Big Boy, Inc.

## TRANSFER AGREEMENT

REDACTED

This Agreement is made and entered into on January 17, 2001 between The Liggett Restaurant Group, Inc. , a Michigan corporation ("LRG"), Liggett Restaurant Enterprises LLC, a Michigan limited liability company (LRE") (LRG and LRE are hereafter collectively referred to as "Liggett"), and Frisch's Restaurants, Inc. ("Frisch's"), an Ohio corporation.

### RECITALS

A. LRG has entered into a certain Asset Purchase Agreement dated October 18, 2000 (the "Elias Purchase Agreement") with Elias Brothers Restaurants, Inc. ("Elias") to purchase certain assets of Elias (the "Elias Asset Package"), including all of Elias' right, title and interest in certain trademarks, copyrights, trade names and service marks used by Elias as franchisor of Big Boy restaurants and by its franchisees of Big Boy restaurants including but not limited to the trademarks listed on Schedule I attached (the "Big Boy Rights");

B. The sale of the Elias Asset Package to LRG (and its affiliates, including Liggett) was approved by the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division (the "Court"). LRG and its affiliates and Elias closed the Elias Purchase Agreement on or about December 28, 2000, to be effective December 21, 2000.

C. Frisch's is the exclusive franchisee of the Big Boy Rights in the states of Kentucky, Indiana and in portions of Ohio and Tennessee, as more fully described on Exhibit A hereto, ("Frisch's Core Region"), and is the primary franchisee in Florida, Oklahoma, Texas and portions of Kansas, as more fully described on Exhibit B hereto (the "Expanded Territory");

D. Frisch's also has certain franchisee rights in North Carolina, South Carolina, Alabama, Arkansas, Mississippi, Louisiana and Missouri, as more fully described on Exhibit C hereto which, together with the Expanded Territory, are the "Reconveyed Territories";

E. LRE is an affiliate of LRG and has been designated by LRG under the Asset Purchase Agreement as the party to whom Elias is to convey the Big Boy Rights at closing;

F. Frisch's and Liggett wish to provide for the transfer of ownership of the Big Boy Rights in Frisch's Core Territory to Frisch's and the transfer of ownership of the Big Boy Rights in the Reconveyed Territories to Liggett, to take effect if and when Liggett acquires the Big Boy Rights from Elias.

#### AGREEMENT

Therefore, in consideration of the respective promises contained herein and other good and valuable consideration, Frisch's and Liggett agree as follows:

1.(a) Frisch's Core Territory. At the Closing, as defined hereafter in Section 5, Liggett shall convey to Frisch's complete, absolute, perpetual and irrevocable ownership of the Big Boy Rights within Frisch's Core Territory. Liggett shall retain complete, absolute, perpetual and irrevocable ownership of the Big Boy Rights outside of Frisch's Core Territory. Liggett's and Frisch's respective ownership of the Big Boy Rights will be further perfected by the filing with the U.S. Trademark Office of concurrent registration documents evidencing Frisch's and Liggett's ownership of such rights within their respective territories. Liggett will cooperate with Frisch's in the preparation and filing of all necessary documents. Notwithstanding the foregoing, Liggett (and its successors and assigns) shall have and/or retain the complete, absolute, perpetual, exclusive, and irrevocable right to license (or the substantial equivalent) the Big Boy Rights for use in connection with non-restaurant operations in Frisch's Core Territory, including without limitation, merchandise, clothing, product placement through multimedia outlets, and memorabilia, but excluding Food Products as defined below. Subject to the limitations hereinafter set forth, Liggett (and its successors and assigns) shall also have perpetual and irrevocable right to license (or the substantial equivalent) the Big Boy Rights in the Frisch's Core Territory for use in connection with prepackaged food products sold other than in restaurants (such food items sold or to be sold within the Frisch's Core Territory are hereinafter referred to

as "Food Product" or "Food Products"), which sale of Food Products shall be subject to the following:

- (i) Other than ice cream cups, ice cream bars or similar product (collectively "Ice Cream"), Liggett shall not sell any Food Products for a period of two (2) years from the date hereof ("Initial Period");
- (ii) After the Initial Period, Liggett may sell any Food Products, provided that with respect to any particular Food Product (excluding Ice Cream): (a) it does not compete with any then existing Food Product sold by Frisch's (for example, Frisch's currently sells tartar sauce in stores and Liggett therefore may not sell tartar sauce in Frisch's Core Territory for so long as Frisch's continues to sell tartar sauce in stores) and (b) Liggett provides Frisch's with written notice of its intent to sell a particular Food Product and, unless Frisch's objects in writing to the sale of such Food Product within 30 days of its receipt of notice from Liggett on the basis that Frisch's believes, exercising reasonable commercial judgement, that the sale of such Food Product in the Frisch's Core Territory will detract from the sale of a similar Frisch's prepared food item or will otherwise have an adverse impact on Frisch's restaurant operations or legitimate business interests in the Big Boy Rights. (For example and without limitation, Frisch's may determine that the sale of such Food Product [even if identical to an existing Frisch's food item] would detract from sales in Frisch's Big Boy restaurants, or that such Food Product's taste, packaging, or presentation does not meet the standard of excellence for Big Boy products in the Frisch's Core Territory, or that the sale of such Food Product is inconsistent with the Big Boy reputation.) In order to make the foregoing determination, Frisch's shall be allowed to analyze and sample the contemplated Food Product upon reasonable notice at Liggett's offices/commissary. Any objection by Frisch's shall be in writing and shall describe in reasonable detail the underlying basis for its objection. Upon receipt of such written objection from Frisch's as aforesaid, Liggett shall not sell such objectionable Food Product unless Liggett first seeks

and obtains a favorable decision from an arbitrator in accordance with Section 10 of the Intellectual Property Use and Non-Compete Agreement of even date between Frisch's and LRE, otherwise, Liggett shall not sell such Food Product. Inadvertent distribution of a Food Product by either party which is rectified with reasonable diligence shall not be deemed a breach of this Agreement;

- (iii) Nothing in this Agreement shall be deemed to require Liggett or Frisch's to pay any royalty or other licensing fees to the other on account of sales of Food Products in the Frisch's Core Territory; and

(b) Concurrent Use. Concurrently with the signing of this Agreement, the parties shall sign the Limited Concurrent Use Consent Agreement attached as Exhibit D, which is expected to be used as an exhibit by Frisch's in its application(s) to be filed in the U.S. Trademark Office to register as a concurrent use registrant of all of the trademarks and service marks contained in or associated with the Big Boy Rights.

2. Assignment of Rights. At the Closing, LRE shall assign to Frisch's, all of LRE's rights and responsibilities as franchisor of the Big Boy Rights within Frisch's Core Territory (including, but not limited to, LRE's rights as franchisor in any franchise agreements where Frisch's is franchisee), so that Frisch's shall succeed to LRE's position as franchisor within Frisch's Core Territory. Upon the transfer of the ownership of the Big Boy Rights within Frisch's Core Territory, Frisch's shall cease to be a franchisee of LRE and Frisch's use of the Big Boy Rights within Frisch's Core Territory shall be unrestricted except to the extent otherwise provided in the "Intellectual Property Use And Non-Compete Agreement" of even date between Frisch's and LRE.

3. Reconveyed Territories. At the Closing, Frisch's shall irrevocably, completely and perpetually convey to LRE (or its assignee) all of Frisch's right, title and interest in and to any franchisee rights or other rights of Frisch's with respect to any Big Boy Rights in the Reconveyed Territories.



4. Purchase Price. At the Closing, Liggett shall pay Frisch's, by wire transfer, the sum of \_\_\_\_\_, and shall deliver to Frisch's its noninterest-bearing promissory note for \_\_\_\_\_ payable in four equal installments on the first, second, third and fourth anniversary dates of the Closing (the "Note"). The Note shall bear a default rate of interest of twelve percent (12%) per annum and all payments shall be accelerated, at Frisch's option, in the event Liggett fails to make a payment within 15 business days of notice of a failure to pay. The foregoing Note may, at the election of any party, be combined with that certain promissory note of even date in the principal amount of \_\_\_\_\_ to be executed by LRE in favor of Frisch's pursuant to the Intellectual Property Use and Non-Compete Agreement. In addition, the combined promissory note shall contain a provision granting Frisch's an election of remedies whereby, upon default by Liggett, Frisch's shall have the option to proceed with collection of the balance due under the combined promissory note, or demand the return of certain portions of the Expanded Territories as described in section 11 herein.

5. Closing. The "Closing" shall take place as soon as is reasonably possible following Liggett's acquisition of the Big Boy Rights from Elias, and in no event later than one week following such acquisition.

6. Expenses. Each party will pay its own expenses of the transactions contemplated hereby, except that Frisch's shall prepare and pay the cost of filing the concurrent registration documents.

7. LRE Warranty. LRE warrants that at the Closing it shall have and shall transfer to Frisch's good and marketable title to all of the Big Boy Rights within Frisch's Core Territory, free and clear of all liens, pledges, mortgages, security interests, claims and encumbrances of any nature whatsoever.

8. Frisch's Warranty. Frisch's warrants that at the Closing it shall have and shall transfer to LRE good and marketable title to all of its franchisee rights or other rights in any way

related to the Big Boy Rights in the Reconveyed Territories, free and clear of all liens, pledges, mortgages, security interests, claims and encumbrances of any nature whatsoever.

9. Notices. Any notice to be given hereunder shall be in writing and shall be sent by certified mail postage prepaid, or by a recognized national overnight delivery service, to the party to be notified, addressed to such party at its address appearing herein or such other address as such party, may, by written notice, have substituted therefore, and the depositing of such a notice in the mail or with the delivery service, so addressed, shall constitute the giving thereof.

**If to Frisch's:** Frisch's Restaurants, Inc.  
2800 Gilbert Avenue  
Cincinnati, Ohio 45206  
Attn: Craig F. Maier, President

**If to Liggett:** Liggett Restaurant Enterprises LLC  
4199 Marcy  
Warren, MI 48091-1799  
Attn: Robert Liggett, President

**With a copy to:** Henry J. Brennan, Esq.  
Timmis & Inman, LLP  
300 Talon Centre  
Detroit, Michigan 48207

10. Extension/Waiver. Either party may agree to extend the time for the performance of any of the obligations or other acts of the other party or waive compliance with any of the agreements contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the authorized representative of such party.

11. Remedies. In the event of a breach by a party of its obligations under this Agreement, the other party shall be entitled to all remedies provided by law or in equity, including, without limitation, the right to obtain an injunction to specially enforce this Agreement. The parties specifically acknowledge that the failure of either of them to effect the transfers contemplated by sections 1, 2 and 3 above would cause irreparable damage not

compensable by money damages and therefore each of them agrees that the remedy for such failure to transfer shall be specific performance. Except as herein expressly limited, the remedies provided herein shall be cumulative and shall not preclude the assertion by any party hereto of any other rights or the seeking of any other remedies against the other hereto. In the event Liggett defaults under the combined promissory note contemplated by section 4 above, then Frisch's shall have the option to proceed with collection of the balance due under the combined promissory note, or in the alternative, to demand the return of portions of the Expanded Territory, as its sole remedy, as follows: (i) if at the time of default the outstanding principal balance due under the combined promissory note is greater than one half (1/2) of the original principal balance, then Frisch's shall have the right to demand the return of two (2) parts of the Expanded Territory (e.g., Texas and Florida); (ii) if at the time of default the outstanding principal balance due under the combined promissory note is less than or equal to one half (1/2) of the original principal balance, then Frisch's shall have the right to demand the return of one (1) part of the Expanded Territory (e.g., Texas only, or Florida only). If Frisch's exercises its option to demand the return of some portion of the Expanded Territory, then Liggett shall be obliged to convey such territory forthwith, subject to any existing franchise agreements, area development agreements, or other franchise or development rights (the "Existing Rights") as have been granted by Liggett its successors and assigns, which Existing Rights and any agreements or instruments related thereto shall remain in full force and effect.

12. Entire Agreement. This Agreement, together with the Concurrent Use Consent Agreement and the Intellectual Property Use and Non-Compete Agreement, set forth the entire integrated understanding and agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements whether written or verbal. This Agreement may not be modified, amended or terminated except in writing signed by all of the parties hereto.

13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute the same instrument.

14. Michigan Law Governs. This Agreement is being made in and shall be governed by and construed and enforced in accordance with the laws of the State of Michigan without regard to conflict of laws principles. Frisch's and Liggett consent to the jurisdiction of the Federal District Court for the Eastern District of Michigan (Detroit) and the Federal District Court Southern District (Ohio) and they each waive any objection to forum or venue and agree to accept service of process by mail in any action arising out of this Agreement. Notwithstanding the foregoing, the parties hereto agree that both parties have equally participated in the drafting of this Agreement and that if any term, condition or provision of this Agreement is deemed or construed to be ambiguous or vague, such ambiguity or vagueness shall not be construed in favor of or against any party to this Agreement.

15. Severability. Should any terms, provision or clause hereof or of any other agreement or document which is required by this Agreement, be held to be invalid, such invalidity shall not affect or render invalid any other provisions or clauses hereof or thereof the consideration or mutuality of which can be given effect without such invalid provision, and all of which shall remain in full force and effect. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable under applicable law.

16. Exhibits. The exhibits referenced in this Agreement and attached hereto shall be deemed to be a part of this Agreement and are incorporated herein by this reference.

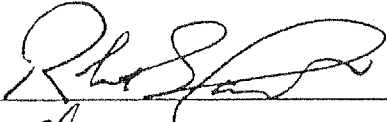
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18. Binding Effect. This Agreement shall be binding upon the parties, their successors and assigns.

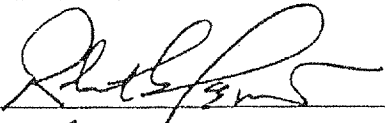
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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by a duly authorized officer on the date first above written.

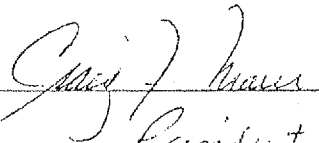
LIGGETT RESTAURANT GROUP, INC.

By:   
Title: Chairman

LIGGETT RESTAURANT ENTERPRISES LLC

By:   
Title: Chairman

FRISCH'S RESTAURANTS, INC.

By:   
Title: President

Schedule I

U.S. TRADEMARKS

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Running "Big Boy"	1,806,061	11/23/93	\$8 - 12/27/99 \$15 - 12/27/99	Exp. 11/22/2003 Renewal 5/22/2003	Int. Cl. 16 Int. Cl. 42	Paper Goods and Printed Matter Misc. Services
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Standing "Big Boy"	910,758	3/30/71	\$8 - 3/28/77 \$15 - 2/24/84	Exp. 6/7/2001 Renewal - 12/7/2000	Int. Cl. 29 Int. Cl. 30 Int. Cl. 32 Int. Cl. 42	Meats and Processed Foods Staple Foods Light Beverages Misc. Services
"Big Boy Express"	1,680,330	3/24/92	Due 1997 - None filed	Exp. - 3/23/2002 Renewal - 9/23/2001	Int. Cl. 42	Misc. Services
"Big Boy" (words only)	1,823,393	2/22/94	\$8 - 1/6/00 \$15 - 1/6/00	Exp. 2/21/2004 Renewal - 8/22/2003	Int. Cl. 42	Misc. Services

NAME	REG. NO.	REG. DATE	Section 8 under 15 filed	EXPIRATION/ RENEWAL DATE	USE CLASSIFICATION	SHORT DESCRIPTION
"Big Boy"	913,601	6/8/91	\$8 - 6/8/71	Exp. 6/7/2001 Renewal - 12/7/2000	Int. Cl. 16	Paper Goods and Printed Matter
Running "Big Boy" w/burger design	935,453	6/6/71	\$8 - 6/6/78 \$15 - 2/24/84	Exp. 6/5/2002 Renewal - 1/5/2002	Int. Cl. 29 Int. Cl. 30 Int. Cl. 35 Int. Cl. 42	Meats and Processed Foods Staple Foods Advertising and Business Misc. Services
"Big Boy"	944,153	10/3/72	\$8 - 8/1/78 \$15 - filed	Exp. 10/2/2002 Renewal - 4/2/2002	Int. Cl. 29 Int. Cl. 30 Int. Cl. 32	Meats and Processed Foods Staple Foods Light Beverages
"Big Boy Diner"	2,059,156	5/6/97	file after 5/6/2002	Exp. 5/5/2007 Renewal - 12/5/2006	Int. Cl. 42	Misc. Services
Running Big Boy with Burger	2,090,105	4/26/96	File between 4/26/01 - 4/26/02	Exp. 8/19/2007 Renewal - 8/19/2006	Int. Cl. 42	Misc. Services
Original Big Boy	2,146,671	3/24/98	File between 3/24/03 - 3/24/04	Exp. 3/23/2008 Renewal - 9/23/2007	Int. Cl. 25 Int. Cl. 28 Int. Cl. 42	Clothing Toys and Sporting Goods Misc. Services
Standing "Big Boy"	1,166,686	8/25/81	\$8 - 3/16/87 \$15 - 3/16/87	Exp. 8/24/2001 Renewal - 2/16/2001	Int. Cl. 29	Meats and Processed Foods
"Bob's"	1,230,137	3/8/83	\$8 - 7/3/89 \$15 - 4/23/90	Exp. 3/7/2003 Renewal - 9/7/2002	Int. Cl. 29 Int. Cl. 30 Int. Cl. 42	Meats and Processed Foods Staple Foods Misc. Service
"Bob's Big Boy"	1,230,170	3/8/83	\$8 - 7/3/89 \$15 - 4/23/90	Exp. 3/7/2003 Renewal - 9/7/2002	Int. Cl. 30 Int. Cl. 42	Staple Foods Misc. Services
"Bob's Big Boy Family Restaurants" (and design)	1,230,569	3/8/83	\$8 - 7/3/89 \$15 - 4/23/90	Exp. 3/7/2003 Renewal - 9/7/2002	Int. Cl. 42	Misc. Services
"Bob's Big Boy Restaurants" (and design)	1,230,570	3/8/83	\$8 - 2/1/89 \$15 - 1/29/90	Exp. 3/7/2003 Renewal - 9/17/2002	Int. Cl. 42	Misc. Services
"Bob's"	1,300,991	10/16/84	\$8 - 10/20/89 \$15 - 1/29/90	Exp. 10/15/2004 Renewal - 4/15/2004	Int. Cl. 42	Misc. Services
"Bob's Mocha Boy Coffee Truly a Cup-O-Flavor"	721,660	9/19/61		Exp. 9/18/2001 Renewal - 3/18/2001	U.S. Cl. 46	Coffee
"Heath. . . Smart"	1,568,926	11/28/89	\$8 - 5/28/96 \$15 - 3/28/96	Exp. 11/28/09 Renewal - 5/28/09	Int. Cl. 42	Misc. Services

NAME	REG. NO.	REG. DATE	Section 8 and/or 15 filed	EXPIRATION/ RENEWAL DATE	USE CLASSIFICATION	SHORT DESCRIPTION
"Top Hat"	1,467,732	12/1/87	None filed	Exp. 11/30/2007 Renewal 5/30/2007	Int. Cl. 42	Misc. Services
"Operation Can Do"	1,375,215	12/10/85	\$8 - 4/16/91 \$15 - 4/16/91	Exp. 12/9/2005 Renewal - 6/9/2005	Int. Cl. 42	Misc. Services
"Elby's"	1,009,275	4/22/75	\$8 - Approx. 1983	Exp. 4/22/05 Renewal - 4/22/04	Int. Cl. 42	Restaurant Services
"FLJ Foods"	2,233,020	3/16/99	File between 3/16/04 - 3/16/05	Exp. 3/16/2009 Renewal - 3/16/2008	Int. Cl. 29 Int. Cl. 30	Meats and Processed Foods Staple Foods

Renewals: Prior to October 1, 1999 - Do not have to file §8 Affidavits with renewals  
After October 1, 1999 - file §8 Affidavits with renewals



# SCHEDULE I

## STATE TRADEMARKS

STATE	MARK/CLASS	REGISTRATION #	DATE OF LAST RENEWAL	EXPIRATION DATE
Indiana	Big Boy - Class 46	5001-256	Assignment - Mar 3, 1999	August 20, 2005
	Big Boy - Class 53	5009-2385	March 18, 2000	March 17, 2010
	Big Boy - Class 46	5009-2386	March 18, 2000	March 17, 2010
Kentucky	Big Boy - Class 42	11633	November 18, 1998	November 18, 2003
Ohio	Big Boy Hamburger - Class 29	TM32272	Assignment from Frisch's dated 12/24/98	October 10, 2008
Tennessee	Big Boy - Class 100		September 23, 1998	February 23, 2009
	Big Boy - Class 46		September 23, 1998	February 23, 2009

# EXHIBIT A

INDIANA

KENTUCKY

OHIO (except for the following counties: Cuyahoga, Lorain, Medina, Summit, Portage, Geauga and Lake)

TENNESSEE (except for the following counties: Anderson, Blount, Campbell, Claiborne, Cocke, Cumberland, Fentress, Grainger, Hamblen, Hancock, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier and Union).

## EXHIBIT B

FLORIDA (subject to certain rights granted to Marriott in a certain Agreement dated February, 1985, between Frisch's Restaurants, Inc., Kip's Big Boy, Inc. and Marriott Corporation)

TEXAS (subject to certain rights granted to Marriott in a certain Agreement dated February, 1985, between Frisch's Restaurants, Inc., Kip's Big Boy, Inc. and Marriott Corporation)

OKLAHOMA

KANSAS (Sedgwick and Sumner counties only)

## EXHIBIT C

Frisch's option for additional territory in NORTH CAROLINA, SOUTH CAROLINA, ALABAMA, ARKANSAS, MISSISSIPPI, LOUISIANA and MISSOURI as set forth in section 21 of a certain Restated and Amended Area Franchise Agreement dated November 2, 1987, by and between Elias Brothers Restaurants, Inc., Frisch's Restaurants, Inc. and Kip's Big Boy, Inc.

**EXHIBIT D**  
**LIMITED CONCURRENT USE CONSENT AGREEMENT**

This Agreement is made and entered into on January 12, 2001 between Liggett Restaurant Enterprises LLC ("Liggett"), a Michigan limited liability company, and Frisch's Restaurants, Inc. ("Frisch's"), an Ohio corporation.

**RECITALS**

A. WHEREAS, Frisch's has been a franchisee of Elias Brothers Restaurants, Inc. ("Elias"), and as a franchisee, has, with the consent of Elias, used many of the trademarks and service marks identified in the attached Schedule I since at least as early as 1946; and

B. WHEREAS, Elias is currently a Chapter 11 Debtor in the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division (the "Court") wherein the Court approved the sale of certain of Elias' assets, including the trademarks and service marks identified in the attached Schedule I, to Liggett (the "Sale"); and

C. WHEREAS, in accordance with the Court's Order, Liggett and Elias closed the Sale on December 28, 2000, effective December 21, 2000; and

D. WHEREAS, the parties to this Agreement desire to ensure that, subject to the terms of the Transfer Agreement and Intellectual Property Use and Non-Compete Agreement dated the date hereof between, among others, Frisch's and Liggett (collectively the "Agreements"), Frisch's obtains all right, title and interest in and to the trademarks and service marks identified in the attached Schedule I for use only in the "Territory" in which it has predominantly been using the marks in the past, which Territory is defined in the attached Exhibit A.

NOW, THEREFORE, in consideration of the respective promises contained herein and other good and valuable consideration, Frisch's and Liggett agree as follows:

Liggett consents to and agrees to assist and cooperate with Frisch's in enabling Frisch's to file in the U.S. Trademark Office and obtain Concurrent Use Registrations strictly limited to use in connection in the Territory of all of the trademarks and service marks identified in the attached Schedule I, which Limited Concurrent Use Registrations shall be owned and used by Frisch's in accordance with the terms of the Agreements and shall be assignable or licensable to any successors, assigns or licensees of Frisch's subject to the terms of said Agreements.

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Signatures on next page

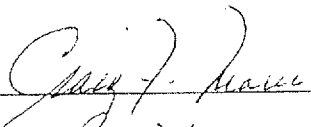
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed  
by a duly authorized officer on the date first above written.

LIGGETT RESTAURANT ENTERPRISES LLC

By: 

Title: Chairman

FRISCH'S RESTAURANTS, INC.

By: 

Title: President

## EXHIBIT B

Registration No. 910,758 -- BIG BOY and Design  
Services: Restaurant services

Registration No. 1,806,061 -- BIG BOY RESTAURANT AND BAKERY (and Design)  
Goods: Menus, cardboard placards, order forms, stationary, printed business application forms, printed office forms, imprinted paper labels, and instructional material; namely, job description packages

Registration No. 1,823,393 -- BIG BOY (words only)  
Services: Restaurants; catering; concession stands featuring food and souvenirs

Registration No. 913,601 -- BIG BOY (words only)  
Goods/Services: Publications-namely, menus, gift certificate booklets, comic books, house organs, printed labels, season's greeting cards, printed business cards, and company history pamphlets; foods and ingredients of foods, partly prepared, prepared, ready-to-eat and frozen-namely, seasoning salt, ham, hamburger and steak relish, onion ring dip mix, canned and frozen soups (bean soup, clam chowder and chili), tomato and spice cream french dressing, [garlic'n-oil italian dressing, thousand island dressing, ] bleu cheese dressing, tartare sauce, shrimp and cocktail sauce, mayonnaise, strawberry glaze, breaded chicken, fountain syrups for use as food and in making food beverages, crackers, sugar, and beef strip loin steak.  
rendering technical assistance in the establishment and operation of restaurants

Registration No. 944,155 -- BIG BOY (words only)  
Goods: Flavored carbonated and non-carbonated non-alcoholic, maltless soft drinks and fountain syrups for making same, both for use in restaurants

Registration No. 2,059,156 -- BIG BOY DINER (and Design)  
Services: Restaurant services including carry-out, concession and catering services, preparing and serving food others

Registration No. 1,166,686 -- BIG BOY and Design  
Goods: Salad Dressings

Registration No. 1,230,170 -- BOB'S BIG BOY  
Goods/Services: Restaurant services; hamburger sandwiches, for consumption on or off the premises

Registration No. 1,230,569 -- BOB'S BIG BOY FAMILY RESTAURANTS (and Design)  
Services: Restaurant services

Registration No. 1,230,570 -- BOB'S BIG BOY RESTAURANTS (and Design)  
Services: Restaurant services



Registration No. 1,818,909 -- Running Big Boy (Design only)

Goods/Services: paper and paper articles; namely, placemats; cardboard and cardboard articles; namely, placards, menus; printed matter; namely, imprinted paper labels, printed application forms, printed office forms; newspaper, containing company and employee information; magazines, containing employee information, employee guidelines, franchise information brochure; books; namely, food and franchise manual; bookbinding material; namely, folders; photographs; stationery; namely, envelopes, letterhead, notepads; adhesive materials; namely, address labels and stickers; artists, materials; namely, paint brushes; instructional and teaching material; namely, management training sheets, employee training sheets, manuals; namely, food, franchise and service instructional seminars; playing cards; printers' type and cliches (stereotype), all distributed to franchisees; meats, fish, poultry, seafood and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, preserves, eggs, milk and other dairy products (excluding ice milk, ice cream, and frozen yogurt); edible oils and fats; pickles; non-dairy whipped toppings, fruit toppings, and nut toppings; salads and salad dressings; soups; potatoes; namely, French fries, instant mash potatoes; coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour, and preparations made from cereals; namely, oatmeal; bread, biscuits, cakes, pastries and confectionery; namely, sticky buns, cinnamon rolls, sugar cookies, chocolate chip cookies, oatmeal raisin cookies; fruit ices; honey, treacle; yeast, baking powder; salt, mustard, pepper, vinegar; maple syrup; syrup toppings; namely, strawberry, chocolate; sauces; namely, spaghetti, tartar, tomato, chili; spices; pies; namely, fruit filled; frozen yogurt; mixes for baking products; namely, pancake mix, corn bread, hush puppies; milkshakes; chocolate based fillings; nonalcoholic drinks; namely, lemonade, orange juice; syrups for making soft drinks; beer, wine; restaurant; food concession stands and catering services; preparing and serving food for others

Registration No. 2,090,105 B Running Big Boy With Burger (Design only)

Services: Restaurant services including carry-out, concession and catering services, preparing and serving food for others

Registration No. 2,442,108 -- BIG BOY RESTAURANT AND MARKET (and Design)

Goods/Services: Menus, cardboard placards, order forms, stationery, printed business application forms, printed office forms, imprinted paper labels, and instructional material, namely job description packages; restaurants, concession and catering services, preparing and serving food for others

Registration No. 2,634,415 -- BIG BOY (and Design)

Services: Restaurant and catering services.

Registration No. 2,734,047 -- BIG BOY AT THE MOVIES (and Design)

Services: Restaurant and catering services.

**EXHIBIT C**

**Copy of Concurrent Use Trademark Application Serial No. 76/391,539**

**Filed by Frisch's Restaurants, Inc., With the Express Consent of  
Big Boy Restaurants International, LLC, in the United States Patent and  
Trademark Office on April 4, 2002**

ATTORNEY DOCKET NO.: FRISCH/01  
MARK: BIG BOY  
INT. CLASSES: 29, 30, and 42

To The Honorable Assistant Commissioner  
of Trademarks  
Box: NEW APP FEE  
2900 Crystal Drive  
Arlington, VA 22202-3513

Applicant is FRISCH'S RESTAURANTS, INC., an Ohio Corporation, with a business address of 2800 Gilbert Avenue, Cincinnati, Ohio 45206 (hereinafter "FRISCH'S").

FRISCH'S has adopted and is using the trademark shown in the accompanying drawing for the following goods and services:

International Class 29: Tartar sauce;

International Class 30: Pies; and

International Class 42: Restaurant, drive through, and carry-out services.

FRISCH'S requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946, for the areas comprising:

Indiana

Kentucky

Ohio, except for the following counties: Cuyahoga, Lorain, Medina, Summit, Portage, Geauga and Lake

Tennessee, except for the following counties: Anderson, Blount, Campbell, Caliborne, Cocke, Cumberland, Fentress, Grainger, Hamblen, Hancock, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier and Union.

FRISCH'S first used the above-identified mark as a licensee on the goods identified in International Class 29 at least as early as February, 1960; FRISCH'S first used the mark as a licensee on the goods identified in International Class 30 at least as early as January, 1946; and FRISCH'S first used the mark as a licensee in connection with the services identified in International Class 42 at least as early as January, 1946. FRISCH'S is presently using the mark in interstate commerce.

The mark is used by applying it to packaging in which the goods are sold, and on promotional materials which advertise FRISCH'S services. Three specimens showing the mark as actually used for the goods and services in each of the referenced International Classes are presented herewith.

The following exception to FRISCH'S right to exclusive use is by:

BIG BOY RESTAURANTS INTERNATIONAL, LLC, a Michigan limited liability company, with a business address of 4199 Marcy, Warren, Michigan 48091-1799 (hereinafter "BIG BOY") for the same goods and services referenced above by applying it to packaging in which the goods are sold, and on promotional materials which advertise BIG BOY's services. Pursuant to a Transfer Agreement dated January 12, 2001 (attached hereto as Exhibit 1), which Agreement contains a Concurrent Use provision (Para. 1(b)) by and between BIG BOY and FRISCH'S, BIG BOY shall retain ownership rights to the above-referenced BIG BOY mark anywhere outside of the above-named territories in which FRISCH'S is using the mark.

On or about December 21, 2000, the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division approved the sale of certain assets of Elias Brothers Restaurants, Inc. ("Elias"), including certain of its intellectual property assets. The proceeding

was a consolidation of case numbers 00-55831 and 00-55837. Pursuant to the Court's Order, BIG BOY purchased out of bankruptcy the following trademarks from their prior owner, Elias:

Registration No. 910,244 -- BIG BOY and Design

Registration No. 910,758 -- BIG BOY and Design

Registration No. 1,806,061 -- BIG BOY RESTAURANT AND BAKERY and Design

Registration No. 1,753,878 -- BIG BOY RESTAURANT AND BAKESHOP and Design  
Cancelled Under Section 8 as of 8/30/99

Registration No. 1,871,436 -- BIG BOY and Design

Registration No. 1,680,330 -- BIG BOY EXPRESS and Design

Registration No. 1,823,393 -- BIG BOY (words only)

Registration No. 913,601 -- BIG BOY (words only)

Registration No. 935,453 -- BIG BOY and Design

Registration No. 944,155 -- BIG BOY (words only)

Registration No. 2,059,156 -- BIG BOY DINER and Design

Registration No. 1,166,686 -- BIG BOY and Design

Registration No. 1,230,170 -- BOB'S BIG BOY

Registration No. 1,230,569 -- BOB'S BIG BOY FAMILY RESTAURANTS (and Design)

Registration No. 1,230,570 -- BOB'S BIG BOY RESTAURANTS (and Design)

Registration No. 1,818,909 -- Running Big Boy (Design only)

Registration No. 2,090,105 -- Running Big Boy With Burger (Design only)

Registration No. 2,145,671 -- Original Big Boy

Registration No. 2,442,108 -- BIG BOY RESTAURANT AND MARKET (and Design)

Application Serial No. 76/222,592 – BIG BOY (and Design)

The undersigned individuals, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that they are properly authorized to execute this application on behalf of FRISCH'S; the undersigned believe FRISCH'S and BIG BOY to be the concurrent owners of the trademark for which registration is sought; to the best of their knowledge and belief no other person, firm, corporation or association has the right to use the said mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of their own knowledge are true and all statements made on information and belief are believed to be true.

The undersigned individuals hereby appoint John D. Poffenberger, Bruce Tittel, Donald F. Frei, David J. Josephic, A. Ralph Navaro, Jr., David S. Stallard, J. Robert Chambers, Gregory J. Lunn, Kurt L. Grossman, Clement H. Luken, Jr., Thomas J. Burger, Gregory F. Ahrens, Wayne L. Jacobs, Kurt A. Summe, Kevin G. Rooney, Keith R. Haupt, Theodore R. Remaklus, Thomas W. Humphrey, Scott A. Stinebruner, Joseph R. Jordan, C. Richard Eby, David E. Pritchard, David H. Brinkman, J. Dwight Poffenberger, Jr., Beverly A. Lyman, Ph.D., Kathryn E. Smith, Kristi L. Davidson, P. Andrew Blatt, Ph.D., David E. Jefferies, William R. Allen, Douglas A. Scholcr, Frank M. Mungo, Brett A. Schatz, Allison A. Davidson, Sarah Otte Graber, and of counsel Thomas W. Flynn, in care of WOOD, HERRON & EVANS, L.L.P., 2700

Carew Tower, 441 Vine Street, Cincinnati, OH 45202-2917 (Telephone No. (513) 241-2324),  
their attorneys with full power of substitution and revocation, to prosecute this application and to  
transact all business in connection therewith, and to receive the Certificate of Registration.

All inquiries regarding this application should be addressed to: Kathryn E. Smith,  
Esq., Wood, Herron & Evans, L.L.P., 2700 Carew Tower, 441 Vine Street, Cincinnati, Ohio  
45202-2917.

FRISCH'S RESTAURANTS, INC.

Date: 4/02/02

By Donald H. Walker  
Name: Donald H. Walker  
Title: Vice President Finance

FILING OF CONCURRENT USE TRADEMARK APPLICATION  
CONSENTED TO BY:

BIG BOY RESTAURANTS  
INTERNATIONAL, LLC

Date: 2-28-02

By Anthony T. Michaels  
Name: ANTHONY T. MICHAELS  
Title: CEO